

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
KRISTIN K. MAYES

7 In the matter of)

8 FOUNTAIN CAPITAL MANAGEMENT, LLC)
9 c/o DAVID A. FAZIO)
3616 West Cortez)
Phoenix, Arizona 85029)

DOCKET NO. S-03505A-04-0000

DECISION NO. 67217

10 INTEGROWTH FINANCIAL GROUP)
11 C/O ROGER ALVIN SANDE)
CDC # V06974)
12 P.O. Box 2210)
Susanville, California 96130)

**ORDER TO CEASE AND DESIST,
ORDER OF RESTITUTION, ORDER
FOR ADMINISTRATIVE PENALTIES
AGAINST RESPONDENTS
INTEGROWTH FINANCIAL GROUP
AND ROGER ALVIN SANDE**

13 RICHARD A. FANDRICH)
14 11424 North 25th Avenue)
Phoenix, Arizona 85029)

15 DAVID A. and DEBORAH FAZIO)
16 3616 West Cortez)
Phoenix, Arizona 85029)

17 DONALD and HELEN ABERNATHY)
18 2323 North Central Avenue, #803)
Phoenix, Arizona, 85004)

19 STEPHEN A. and JANE DOE HILTBRAND)
20 2156 E. Estrella Circle)
Mesa, Arizona 85202)

21 ROGER ALVIN SANDE)
22 CDC # V06974)
P.O. Box 2210)
23 Susanville, California 96130)

24 Respondents.)

25 On May 7, 2004, the Securities Division ("Division") of the Arizona Corporation
26 Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order

1 to Cease and Desist, Order for Restitution, for Administrative Penalties and for Other Affirmative
2 Relief ("Notice") with respect to RESPONDENTS INTERGROWTH FINANCIAL GROUP
3 ('INTERGROWTH') and ROGER ALVIN SANDE("SANDE"). The Division served the Notice on
4 INTERGROWTH and SANDE via personal service on June 2, 2004. The Notice specified that the
5 INTERGROWTH and SANDE would be afforded an opportunity for an administrative hearing
6 regarding this matter upon filing a written request with Docket Control of the Commission within
7 ten days of receipt of the Notice. INTERGROWTH and SANDE failed to request a hearing within
8 the required time.

9
10 **I.**

11 **FINDINGS OF FACT**

12 1. INTERGROWTH FINANCIAL GROUP ("INTERGROWTH") is an entity controlled
13 by Roger A. Sande, who currently resides at CDC # V06974, P.O. Box 2210, Susanville, California
14 96130.

15 2. ROGER ALVIN SANDE ("SANDE") currently resides at CDC # V06974, P.O. Box
16 2210, Susanville, California 96130.

17 3. Neither INTERGROWTH nor SANDE were registered with the Division as a broker
18 or a securities salesman.

19 4. In 1999, INTERGROWTH and SANDE recruited RESPONDENTS RICHARD A.
20 FANDRICH ("FANDRICH"), DONALD ABERNATHY ("ABERNATHY"), DAVID A. FAZIO
21 ("FAZIO") and STEPHEN A. HILTBRAND ("HILTBRAND") (collectively "the INDIVIDUAL
22 RESPONDENTS") to start a branch office of INTERGROWTH in Phoenix. SANDE told the
23 INDIVIDUAL RESPONDENTS that INTERGROWTH was his company. The purpose of the
24 company was to sell viatical and other investment opportunities to members of the public in
25 Arizona. SANDE told the INDIVIDUAL RESPONDENTS that INTERGROWTH marketed
26 viatical policies. SANDE agreed with the INDIVIDUAL RESPONDENTS that INTERGROWTH

1 would pay all expenses incurred in the sale of the viaticals and would pay the INDIVIDUAL
2 RESPONDENTS a 7% commission on each viatical policy they sold.

3 5. In June 1999, the INDIVIDUAL RESPONDENTS formed FOUNTAIN CAPITAL
4 MANAGEMENT, LLC ("FCM"), and continued their operations under its name. The
5 INDIVIDUAL RESPONDENTS and FCM (collectively the "FCM RESPONDENTS") continued
6 to sell viatical policies, just as they had with INTEGROWTH. INTEGROWTH or SANDE
7 continued to receive an override commission on all products sold by the FCM RESPONDENTS.

8 6. Both INTEGROWTH and FCM ran advertisements in Phoenix newspapers,
9 offering investments with returns as high as 40%. Once investors called, INTEGROWTH,
10 SANDE and the FCM RESPONDENTS (collectively "RESPONDENTS") attempted to sell them
11 the investments.

12 **The Viatical Policies**

13 7. From at least January 1999 through at least June 2000, RESPONDENTS offered and
14 sold securities in the form of viatical settlement contracts and investment contracts to Arizona
15 investors. A viatical settlement contract involves the purchase of an interest in the proceeds from a
16 life insurance policy of a terminally ill individual. Various viatical companies purchase the
17 policies at a discount and re-sell the benefits to investors at less than the full face value. When the
18 policy matures, that is when the insured dies, the investor receives the full face value as return of
19 investment plus profit.
20

21 8. All viatical policies sold by RESPONDENTS were on behalf of Future First
22 Financial Group ("Future First") of Pointe Verda Beach, Florida. RESPONDENTS told investors
23 that the only risk involved with the purchase of viatical policies was the risk that the insured would
24 die at a later date, thereby reducing the expected return. They informed investors that returns could
25 be as high as 100%, with the investment being safe and guaranteed.
26

1 9. Investors did not receive medical information on the insured whose policy they
2 purchased. Rather, they received a short summary from a medical doctor, simply describing the
3 life expectancy of the insured. RESPONDENTS never checked and thus did not inform investors
4 that the doctor who wrote the medical summary was a Florida cosmetic doctor. Investors were
5 told that Future First viatical policies were 100% correct in their medical assessments with no
6 insured living past their expected date of death.

7 10. Investors were also informed that they would never have to pay any fees or other
8 payments after they purchased the viatical policy.

9 11. On or about February 4, 2000, Future First and its vice-president were indicted by
10 the state of Florida for 81 counts of grand theft and one count of organized fraud in connection
11 with the marketing of fraudulently obtained policies valued at \$6,900,000. After Future First
12 defaulted on its management responsibilities with respect to the viatical policies, investors were left
13 with the choice of making additional payments to keep the policies in effect or allowing policies to
14 lapse due to nonpayment of premiums. Some Future First viatical policies were found not to have
15 actual underlying insurance policies.

16 12. RESPONDENTS failed to provide full disclosure regarding the investment
17 including risk, disclosure statements, prospectuses, financial statements or RESPONDENTS' own
18 lack of due diligence in investigating the investment. RESPONDENTS failed to provide certain
19 material information to investors about Future First, including but not limited to past operations,
20 balance sheets, statements of income, retained earnings, and cash flows that would reflect the
21 financial position of these entities. RESPONDENTS distributed literature that misrepresented the
22 investment as a "no risk" opportunity. RESPONDENTS failed to provide investors with certain
23 material information about the use of investor proceeds, such as the cost to purchase the policy, the
24 fees and commissions payable to them, medical advisors, or any other participants in the program.
25
26

1 13. From January 1999 through at least June 2000, RESPONDENTS offered and sold
2 securities in the form of viatical settlement contracts and investment contracts to at least 34
3 Arizona investors, who invested a total of at least \$1,110,482.

4 **Chemical Trust Investment Contract**

5 14. Beginning 1999, RESPONDENTS began offering the Chemical Trust investment.
6 Investors were told that Chemical Trust was a “Members Only Investment Trust” located in West
7 Palm Beach, Florida. Agents, such as RESPONDENTS, were instructed to market the investment to
8 investors at a minimum of \$10,000 per contract for 12 months or more. RESPONDENTS were given
9 authority to offer as much as 25% interest for each investment. Of that 25%, RESPONDENTS were
10 able to choose how much to offer to investors as interest and how much they would keep for their
11 commissions for selling the investment.
12

13 15. Investors were told that the investments are guaranteed two ways. First, the
14 investments are guaranteed by Chemical Trust which allegedly held \$450,000,000 in assets.
15 Second, the investments were guaranteed by a surety payment bond totaling “in excess of \$6
16 billion dollars” that was provided “for 100% of their principal amount invested” at no cost to the
17 investor. The surety payment bond was allegedly provided by U. S. Guarantee Corporation
18 located in Phoenix, Arizona. In fact, U. S. Guarantee Corporation is not licensed in Arizona as a
19 surety insurer. USGC allegedly had assets of \$2,415,142,120, which backed up the bond
20 guaranteeing the investment. Those funds turned out not to exist.
21

22 16. RESPONDENTS informed investors that Chemical Trust had been in business for
23 14 years. Chemical Trust allegedly made profits by purchasing U.S. Treasury notes and distressed
24 property at discount, selling for an immediate profit.

25 17. On January 7, 2000, the SEC filed a complaint against Chemical Trust, USGC, and
26 others alleging that the money invested with them was misappropriated and sent to offshore bank

1 accounts. It also alleged that Chemical Trust represented to investors that their funds would be
2 used to purchase U.S. Treasury notes and distressed properties, and the investment was 100 percent
3 guaranteed through the security bond with U.S. Guarantee. According to the SEC's complaint,
4 Chemical had not purchased any U.S. Treasury notes or distressed properties, and investor funds
5 were not secured. The complaint alleges that, in a classic Ponzi scheme fashion, Chemical Trust
6 used new investor funds to pay interest to existing investors, in a Ponzi scheme. Subsequently, a
7 preliminary injunction and final judgment was issued against the defendants and a receiver
8 appointed to attempt to collect assets.

9 18. On June 30, 2000, the ACC entered an Order against Chemical Trust and others,
10 finding that they violated the Arizona Securities Act. *See In re Alliance Trust, at al.*, DOCKET
11 NO. S-03363A-99-0000.

12 19. RESPONDENTS sold at least \$856,042 of investments in Chemical Trust to
13 at least 20 investors.

14
15 **The Other Securities Orders**

16 20. In 1996, the Missouri Commissioner of Securities issued an order against
17 ABERNATHY for violation of its securities laws.

18 21. On September 28, 1999, the Iowa Securities Bureau issued an order against
19 INTEGROWTH and ABERNATHY for violation of its securities laws for their sale of the
20 Chemical Trust products.

21 22. On August 24, 1999, the North Dakota Commissioner of Securities issued an
22 order against INTEGROWTH and HILTBRAND for violations of its securities laws.

23 23. On October 29, 2001, SANDE was arrested on 38 felony counts of theft and
24 unlicensed sales of viaticals, allegedly defrauding investors of over \$2.7 million. On November
25

1 19, 2003, SANDE was sentenced to seven years and four months in prison, in addition to paying
2 \$1,453,929.56 in restitution.

3 24. On November 11, 2003, the Wisconsin Department issued an order for fraud in
4 the sale of securities against FCM, ABERNATHY, FAZIO and FANDRICH.

5 25. RESPONDENTS did not inform any investors of any of the Orders against them,
6 nor of any of the Orders against the companies whose investments they sold.

7 **II.**

8 **CONCLUSIONS OF LAW**

9 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
10 Constitution and the Securities Act.

11 2. INTEGROWTH and SANDE offered or sold securities within or from Arizona, within
12 the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

13 3. INTEGROWTH and SANDE violated A.R.S. § 44-1841 by offering or selling
14 securities that were neither registered nor exempt from registration.

15 4. INTEGROWTH and SANDE violated A.R.S. § 44-1842 by offering or selling
16 securities while neither registered as dealers or salesmen nor exempt from registration.

17 5. INTEGROWTH and SANDE violated A.R.S. § 44-1991 by offering or selling
18 securities within or from Arizona by (a) employing a device, scheme or artifice to defraud, (b)
19 making untrue statements or misleading omissions of material facts, and (c) engaging in
20 transactions, practices or courses of business which operate or would operate as a fraud or deceit.

21 6. SANDE directly or indirectly controlled INTEGROWTH within the meaning of A.R.S. §
22 44-1999. Therefore, he is liable to the same extent as INTEGROWTH for its violations of A.R.S. §
23 44-1991.

24 7. INTEGROWTH and SANDE's conduct is grounds for a cease and desist order
25 pursuant to A.R.S. § 44-2032.
26

8. INTEGROWTH and SANDE's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

9. INTEGROWTH and SANDE's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that INTEGROWTH and SANDE, their agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that INTEGROWTH and SANDE shall, jointly and severally, pay restitution to investors shown on the records of the Commission in the amount of \$1,966,524, plus interest at the rate of 10% per annum from the date of each investment until paid in full. INTEGROWTH and SANDE shall be entitled to setoffs for restitution paid to investors and verified by the Director of Securities. Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. If all investors are paid in full, any excess funds shall revert to the state of Arizona. If INTEGROWTH and SANDE do not comply with this order of restitution, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that INTEGROWTH and SANDE, jointly and severally, shall pay an administrative penalty in the amount of \$50,000, payable to the "State of Arizona." Payment shall be made in full by cashier's check or money

order on the date of this Order. If INTEGROWTH and SANDE do not comply with this order for administrative penalties, any outstanding balance may be deemed in default and shall be immediately due and payable without notice or demand.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

/s/ Marc Spitzer
CHAIRMAN

William A. Mundell
COMMISSIONER

Jeffrey Hatch-Miller
COMMISSIONER

Lowell Gleason

COMMISSIONER

Kristin Mayes

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 24th day of August, 2004

/s/ Brian C. McNeil

BRIAN C. McNEIL
Executive Secretary

DISSENT

DISSENT

This document is available in alternative formats by contacting Yvonne L. McFarlin, Executive Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail ymcfarlin@cc.state.az.us.

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